

# How to have your say

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## Submissions process

The Ministry of Business, Innovation and Employment (MBIE) seeks written submissions on the issues raised in this document by **5pm on Friday 31 March 2017**.

Your submission may respond to any or all of these questions. We also encourage your input on any other relevant work. Where possible, please include evidence to support your views, for example references to independent research, facts and figures, or relevant examples.

Please include your name, or the name of your organisation, and contact details. You can make your submission:

- By attaching your submission as a Microsoft Word attachment and sending to [faareview@mbie.govt.nz](mailto:faareview@mbie.govt.nz).
- By mailing your submission to:

Financial Markets Policy  
Building, Resources and Markets  
Ministry of Business, Innovation & Employment  
PO Box 1473  
Wellington 6140  
New Zealand

Please direct any questions that you have in relation to the submissions process to:  
[faareview@mbie.govt.nz](mailto:faareview@mbie.govt.nz).

## Use of information

The information provided in submissions will be used to inform the development of the Financial Services Legislation Amendment Bill, decisions in relation to the outstanding policy matters, and advice to Ministers.

We may contact submitters directly if we require clarification of any matters in submissions.

Except for material that may be defamatory, MBIE intends to upload PDF copies of submissions received to MBIE's website at [www.mbie.govt.nz](http://www.mbie.govt.nz). MBIE will consider you to have consented to uploading by making a submission, unless you clearly specify otherwise in your submission.

## Release of information

Submissions are also subject to the Official Information Act 1982. Please set out clearly in the cover letter or e-mail accompanying your submission if you have any objection to the release of any information in the submission, and in particular, which parts you consider should be withheld, together with the reasons for withholding the information. MBIE will take such objections into account and will consult with submitters when responding to requests under the Official Information Act 1982.

If your submission contains any confidential information, please indicate this on the front of the submission. Any confidential information should be clearly marked within the text. If you wish to provide a submission containing confidential information, please provide a separate version excluding the relevant information for publication on our website.

## Private information

The Privacy Act 1993 establishes certain principles with respect to the collection, use and disclosure of information about individuals by various agencies, including MBIE. Any personal information you supply to MBIE in the course of making a submission will only be used for the purpose of assisting in the development of policy advice in relation to this review. Please clearly indicate in the cover letter or e-mail accompanying your submission if you do not wish your name, or any other personal information, to be included in any summary of submissions that MBIE may publish.

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## Part 3 of the Bill sets out additional regulation of financial advice

5. Do you agree that the duty to put the client's interest first should apply both in giving the advice and doing anything in relation to the giving of advice? Does this make it clear that the duty does not only apply in the moment of giving advice?

The duty to put the client's interests first should be limited to and by the nature and scope of the advice and any limits disclosed under the proposed section 431G. The financial advice provider, financial adviser, and financial advice representative should be required to go no further than the scope set under that section in order to put the client's interests first.

Without this limitation, a general duty to put the client's interests first could potentially require the adviser to go outside the agreed scope and offer other products or services if that is in the best interests of the client even if the client is seeking advice on only one particular product. This would not be possible where a financial advice provider, financial adviser or financial advice representative had only a limited range of products available to them.

In addition AILIC believes that the financial advice provider, financial adviser or financial advice representative must always be able to refuse to provide financial advice, and instead provide information only. It should also be up to the customer to choose whether he/she wants to receive financial advice.

6. Do you have any comments on the proposed wording of the duty that a provider must not give a representative any kind of inappropriate payment or incentive? What

impacts (both positive and negative) could this duty have?

AILIC agrees with the principle of limiting inappropriate payments or other incentives, however the term “inappropriate” is unclear and potentially very broad.

There is a risk that the prohibition on inappropriate incentives could be argued to effectively prohibit any sales-based performance commission, which we understand is not the intention. The legislation should therefore clarify that not all volume-based incentives are necessarily “inappropriate”.

Financial advice providers must have certainty on how to organise their commission structure when the new regime commences. In addition to legislative clarification, AILIC would also welcome upfront guidance and practical examples on what constitute appropriate incentive programmes.

There should also be a defence or safe harbour available to financial advice providers who can show that they have put in place appropriate incentive policies, procedures and controls.

## Part 5 of the Bill makes miscellaneous amendments to the FMC Act

12. Should the regime allow financial advice providers to run a defence that they met their obligations to have in place processes, and provide resources to enable their advisers to comply with their duties?

Yes. Financial advice providers should have a defence against liability arising from the actions of their financial advice representatives and financial advisers in circumstances where the financial advice provider has taken all reasonable steps to ensure that they have in place appropriate processes, and provide resources to enable their advisers to comply with their duties.

This could be similar to the defence in section 499 of the FMCA.

15. Do you have any other feedback on the drafting of Part 5 of the Bill?

Under the draft Bill, a financial advice representative is neither civilly liable (other than having accessory liability in limited circumstances) nor subject to disciplinary action, however, the financial advice provider on whose behalf the representative was acting may be civilly liable.

AILIC does not support the lack of any accountability on the financial adviser representative. As a minimum, a financial adviser representative should be subject to disciplinary action if they have acted outside of the relevant financial advice provider's authority or intentionally breached their duties.

## Demographics

16. Name:

American Income Life Insurance Company

17. Contact details:

Joel Scarborough  
Senior Vice President and Associate General Counsel

**REDACTED**

18. Are you providing this submission:

As an individual

On behalf of an organisation

American Income Life Insurance Company (AILIC) is a life insurance company licenced by the Reserve Bank as an insurer in New Zealand and registered as a financial service provider. AILIC's principal place of business is in Waco, Texas. AILIC provides life and health insurance products to individuals.

AILIC's insurance products are currently distributed by RFA's, which are independent contractors and not employed by AILIC.

19. Please select if your submission contains confidential information:

I would like my submission (or specified parts of my submission) to be kept confidential, and attach my reasons for this for consideration by MBIE.

Reason:  Enter text here.